

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lianne May	Team: Squad #7	CCRB Case #: 202007855	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/10/2020 10:33 AM	Location of Incident: in front of 1528 Broadway	Precinct: 14	18 Mo. SOL 5/10/2022	EO SOL 5/10/2022	
Date/Time CV Reported Tue, 11/10/2020 11:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 12/01/2020 12:12 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Freeman	29318	954826	PBMS
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Martinez	26310	954104	PBMS
2. SGT Peter Rodeschin	03411	931064	PBMS
3. POM Steeve Juillet	27210	950651	PBMS
4. POM James Arenella	19964	952419	PBMS
5. POM Philip Siu	07496	955501	PBMS
6. POM Andrew Bhagan	07525	956786	PBMS
7. POM Steven Lancia	08781	939755	PBMS
8. POM Adam Gutwein	04177	954904	PBMS
9. POM Christopher Martinez	24897	955132	PBMS
10. POM Jian Yu	11250	956343	PBMS
11. POM Md Islamsarker	13050	955999	PBMS
12. POM Wilkenson Pierre	10060	949486	PBMS
13. POM Octavio Diaz	30832	953819	PBMS

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Freeman	Abuse: Police Officer Andrew Freeman questioned § 87(2)(b)	
B.POM Andrew Freeman	Force: Police Officer Andrew Freeman used physical force against § 87(2)(b)	
C.POM Andrew Freeman	Force: Police Officer Andrew Freeman restricted § 87(2)(b) breathing.	
D.POM Andrew Freeman	Abuse: Police Officer Andrew Freeman unlawfully arrested § 87(2)(b)	
E. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	

Case Summary

On November 10, 2020, § 87(2)(b) called the NYPD Internal Affairs Bureau to report the following complaint on behalf of § 87(2)(b). § 87(2)(b) witnessed the incident but did not know § 87(2)(b) (BR1).

§ 87(2)(b) and a friend entered the McDonald's at 1528 Broadway in Manhattan on November 10, 2020, at 10:35AM. § 87(2)(b) the security guard at the McDonald's called 911 stating there was a disorderly male inside 1528 Broadway who previously assaulted a manager. Police Officer Andrew Freeman and Police Officer Michael Martinez, both of Patrol Borough Manhattan South, responded. § 87(2)(b) told PO Freeman that he had recognized § 87(2)(b) as previously assaulting a manager and requested that he leave. § 87(2)(b) told them § 87(2)(b) was trespassing. PO Freeman requested § 87(2)(b) identification (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Freeman then followed § 87(2)(b) out of the McDonald's and around the street corner. PO Freeman then used force to place § 87(2)(b) into custody (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) alleged that PO Freeman restricted his breathing (**Allegation C: Force**, § 87(2)(g)). PO Freeman then arrested § 87(2)(b) for obstruction of governmental administration (OGA) and disorderly conduct (**Allegation D: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) alleged that an officer told § 87(2)(b) to "get the fuck out of here" (**Allegation E: Discourtesy**, § 87(2)(g)).

The investigation received 19 body-worn camera (BWC) videos (BR2) and 12 security videos from McDonald's (BR3).

Findings and Recommendations

Allegation A- Abuse of Authority: Police Officer Andrew Freeman questioned § 87(2)(b) explained to the CCRB that he went to McDonald's at 1528 Broadway in Manhattan at 10:35AM on November 10, 2020. A security guard, § 87(2)(b) requested he put on his mask and said that he was not allowed to be at that store due to a previous argument with someone in the store. The manager told § 87(2)(b) he was allowed to order food, but § 87(2)(b) called the police. § 87(2)(b) walked toward the exit when he saw PO Freeman and PO Martinez (BR4).

In EVENT § 87(2)(b), § 87(2)(b) called 911 stating there was a disorderly male inside 1528 Broadway who previously assaulted a manager (BR5).

In PO Freeman's BWC from 1:00-3:10, PO Freeman and PO Martinez enter the McDonald's with § 87(2)(b) and another individual in a neon green hoodie are walking toward the exit with McDonald's food in their hands. § 87(2)(b) states, "this gentleman is not supposed to be here because he confronts one of the managers." PO Freeman asks § 87(2)(b) twice why he is in the McDonald's. § 87(2)(b) says that the manager let him order food. PO Freeman asks § 87(2)(b) "you want a trespassing?" and § 87(2)(b) states, "I want a trespassing on him." PO Freeman tells § 87(2)(b) to give him identification. § 87(2)(b) says that PO Freeman is going to have to speak with the manager. PO Freeman says, "no, I don't. Give me your ID." § 87(2)(b) then points at § 87(2)(b) and says, "he's not the manager. Speak to the manager." PO Freeman states, "stop it. Give me your ID." PO Freeman continues to ask for § 87(2)(b) identification. PO Freeman states that § 87(2)(b) was trespassing from the information from § 87(2)(b). § 87(2)(b) insists that the manager allowed him inside and that he was just leaving. § 87(2)(b) states that the manager let him order his food and § 87(2)(b) says, "because she's not aware of everything that happened." § 87(2)(b) says that he is not talking to the officers, turns around, and walks further into the McDonald's. PO Freeman says,

“You’re gonna have it, bro. You’re about to get trespassed, bro.” § 87(2)(b) then exits through a side door (BR6).

PO Freeman explained that he received a radio run for a disorderly male inside of McDonald’s who was refusing to leave. Upon arrival, PO Freeman recognized § 87(2)(b) PO Freeman knows § 87(2)(b) previously for being very violent and is a known drug dealer in Times Square. There was a security guard, § 87(2)(b) who told them § 87(2)(b) was not allowed to be there; this was how PO Freeman understood § 87(2)(b) was trespassing. PO Freeman never spoke to any McDonald’s employees. § 87(2)(b) requested the officers remove § 87(2)(b) for trespassing. PO Freeman continually tried to get § 87(2)(b) identification because he wanted to issue § 87(2)(b) a C summons for trespassing, but § 87(2)(b) refused. PO Freeman explained that at this point, § 87(2)(b) was not allowed to leave because he was assumed to be trespassing (BR7).

As per *People v. DeBour*, 40 N.Y. 2d 210, 233 (1976), an officer may stop and question a person when the officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor (BR8).

As per BWC and PO Freeman’s testimony, § 87(2)(b) informed officers that § 87(2)(b) was trespassing in the McDonald’s. § 87(2)(b) told the officers that § 87(2)(b) was not allowed to be inside the McDonald’s due to a previous assault. Because of § 87(2)(b) information and the fact that § 87(2)(b) was still in the McDonald’s when PO Freeman responded, § 87(2)(g)

Allegation B- Force: Police Officer Andrew Freeman used physical force against § 87(2)(b)

Allegation C- Force: Police Officer Andrew Freeman restricted § 87(2)(b) breathing.

Allegation D- Abuse of Authority: Police Officer Andrew Freeman unlawfully arrested § 87(2)(b)

§ 87(2)(b) further explained that PO Freeman followed him out of the store while PO Martinez stayed in the store. § 87(2)(b) continually called PO Freeman “fat” as he walked away from PO Freeman. PO Freeman was following him and then grabbed § 87(2)(b) from behind, so PO Freeman’s arm was in front of § 87(2)(b). At this point, other officers arrived and brought § 87(2)(b) to the ground. § 87(2)(b) began having trouble breathing because PO Freeman and other officers were attempting to lay § 87(2)(b) flat on his stomach. The officers were on top of his legs as they handcuffed him (BR4).

§ 87(2)(b) the complainant of the case who only witnessed the arrest, explained that he saw PO Freeman “tackle” § 87(2)(b) by laying on top of § 87(2)(b). PO Freeman placed his arm around § 87(2)(b) chest and squeezed. Approximately nine other officers arrived and handcuffed § 87(2)(b) (BR9).

In PO Freeman’s BWC from 3:00-4:26, PO Freeman is following § 87(2)(b) as he walks away through the street and around on the sidewalk. As PO Freeman follows him, PO Freeman orders § 87(2)(b) in succession to come to him, go away, come back to him, to not come back, keep walking, and that he cannot go inside the store. § 87(2)(b) tells him to stop following him. From 4:26-6:15, PO Freeman and officers apprehend § 87(2)(b). § 87(2)(b) does not say his breathing was ever restricted on BWC. § 87(2)(b) only states repeatedly that he did not do anything (BR6).

In McDonald's security footage in the 33rd Exterior camera from 46:26-53:00, § 87(2)(b) wearing all black clothing and shoes and carrying McDonald's food, walks outside and PO Freeman follows him. PO Martinez follows PO Freeman. § 87(2)(b) walks on the sidewalk, in the street just out of the bike lane, and back onto the sidewalk. PO Freeman stands on the sidewalk and follows § 87(2)(b) until timestamp 47:25. At this point, PO Freeman is still following § 87(2)(b) on the sidewalk and then grabs the sides of his arms and shoulders, causing § 87(2)(b) to drop his food. § 87(2)(b) attempts to walk away, and PO Martinez walks over and helps PO Freeman. PO Freeman calls for additional units and PO Freeman and PO Martinez pull § 87(2)(b) to the ground. § 87(2)(b) lays facedown, and PO Martinez pulls his legs back when he tries to stand up. Other officers then arrived, and approximately three other officers help to handcuff § 87(2)(b) and take him to a marked SUV (BR3).

In PO Freeman's BWC from 7:30-10:27, § 87(2)(b) asks why he is being arrested. PO Freeman says he is being arrested for disorderly conduct and trespassing. PO Freeman then speaks with Sergeant Peter Rodeschin also of Patrol Borough Manhattan South about the arrest. PO Freeman says that § 87(2)(b) was committing disorderly conduct in McDonald's before saying that he was trespassing. PO Freeman states, "I told him to stay. He left. He had a chance to leave, but he didn't want to. Caused a scene, so discon, resisting arrest, and trespassing." Upon further discussion, they agree to also charge him with OGA (BR6).

In all of the received footage for this incident, § 87(2)(b) curses at PO Freeman, yells in frustration, and walks away from PO Freeman into the empty street. However, he never threatens any of the officers, approaches the officers, yells at anyone other than PO Freeman, and does not block traffic. He never takes any violent actions against anyone (BR2; BR3).

PO Freeman explained that at first, he did not want to stop § 87(2)(b) because of his history of violence. However, § 87(2)(b) was not allowed to leave when he requested his identification in the McDonald's. PO Freeman stated that § 87(2)(b) could not come back inside because he was trespassing. § 87(2)(b) was not free to go but he told him not to come back into the store or near the officers because they were low on manpower and didn't have the resources to deal with his potential violence, so PO Freeman did not try to stop him from leaving. PO Freeman never spoke to the manager on scene because she had left by the time he came. PO Freeman only spoke to § 87(2)(b) who said that the manager was hiding and did not want to come out for fear of § 87(2)(b). PO Freeman explained he was going to prepare a UF-61 for trespassing and arrest § 87(2)(b) under OGA for not providing his identification. § 87(2)(b) was not allowed to leave. Aside from not providing the identification, § 87(2)(b) was not committing OGA in any other way (BR7).

PO Freeman explained again that he never tried to prevent § 87(2)(b) from leaving because they did not have the manpower and backup resources available during this entire tour due to a COVID-19 shortage of supervisors. PO Freeman explained that he understood § 87(2)(b) would be a problem all day, so that was when PO Freeman decided he was not free to go and wanted to take him in. PO Freeman told the CCRB that he continually stated, "keep walking" to § 87(2)(b) not to mean that § 87(2)(b) was allowed to leave but was just trying to talk to § 87(2)(b). PO Freeman said he was "just saying things back to him" but did not ever mean § 87(2)(b) was free to go. PO Freeman walked outside to keep track of § 87(2)(b) as he did not want him to go back into McDonald's. PO Freeman was standing on the sidewalk when § 87(2)(b) was cursing at PO Freeman. There was a crowd forming around the area. PO Freeman alleged that § 87(2)(b) approached him and the door to McDonald's. This is when PO Freeman grabbed § 87(2)(b) hands to prevent any more violence. PO Martinez assisted in restraining § 87(2)(b) on the ground. No one ever obstructed § 87(2)(b) breathing (BR7).

PO Freeman reviewed the above part of the 33rd Exterior camera in his CCRB interview and said that it showed the crowd of people that were approaching them. However, he amended his previous testimony to say that there was not a crowd, but only a few people (BR7).

§ 87(2)(b) was arrested under a first charge of obstructing governmental administration (OGA) under arrest § 87(2)(b) § 87(2)(b)

PO Freeman explained that § 87(2)(b) was arrested for disorderly conduct and OGA. His actions that constituted disorderly conduct were yelling, screaming, blocking traffic, being violent and threatening, and throwing his arms and hands in the air. PO Freeman did not remember what else he was saying, but § 87(2)(b) was saying threatening statements (BR7).

As per Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. In addition to many other factors, the presence of hostile crowd or agitators may be taken into consideration when using force (BR11).

According to New York CLS Penal §195.05, a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration (BR12).

According to New York CLS Penal § 240.20, a person is guilty of disorderly conduct when he engages in fighting or in violent, tumultuous or threatening behavior, makes unreasonable noise, he uses abusive or obscene language, or makes an obscene gesture, disturbs any lawful assembly or meeting of persons, obstructs vehicular or pedestrian traffic, congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse, or creates a hazardous or physically offensive condition by any act which serves no legitimate purpose (BR13).

PO Freeman explained to the CCRB that § 87(2)(b) was arrested for OGA only because he refused to provide his identification to PO Freeman. PO Freeman testified that § 87(2)(b) was not free to leave when he asked § 87(2)(b) for his identification, but also acknowledged that once § 87(2)(b) exited the McDonald's, he did not immediately prevent him from leaving or arrest him, told § 87(2)(b) to keep walking, and told him not to come back to McDonald's or come near the officers. Based on PO Freeman's actions after § 87(2)(b) left the McDonald's, the investigation determined that § 87(2)(b) leaving the McDonald's without providing his identification did not rise to the level of OGA. In addition, PO Freeman said that he arrested § 87(2)(b) for disorderly conduct for allegedly yelling, screaming, blocking traffic, being violent and threatening, and throwing his arms and hands in the air while a crowd formed. As per video footage and PO Freeman's testimony, a crowd did not form, and § 87(2)(b) actions were not disorderly as PO Freeman or New York CLS Penal § 240.20 describe. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged in his CCRB interview that PO Freeman restricted his breathing. As per BWC and security footage, no officers were in positions that would have restricted his breathing. § 87(2)(b)

Allegation E- Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that there was an “undercover” male officer who was talking with the uniformed officers. This alleged undercover officer was a tall Black male wearing a small hat. § 87(2)(b) explained that he believed this male was an undercover officer because he was talking with the other officers. The “undercover” officer loudly told § 87(2)(b) “get the fuck out of here, just get away from here” (BR9).

In PO Freeman’s first BWC 6:15-6:30 (BR6), § 87(2)(b) states, “leave that man alone.” An older, light skinned black male, who is not taking any police enforcement action and not standing with the officers on scene, states, “shut up and get out of here...get the fuck out of here.” § 87(2)(b) states, “I’m sticking up for this man.” The man in the green shirt states, “fuck that shit.”

In his CCRB interview, PO Freeman viewed this interaction with alleged undercover officer on BWC and did not know who that person was. He testified that he was not an NYPD officer (BR7).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR14).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR15).
- Police Officer Andrew Freeman has been a member of service for eight years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated.

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of February 9, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR19).

Squad: 7

Investigator: Lianne May
Signature

Investigator Lianne May
Print Title & Name
Manager Vanessa Rosen

February 17, 2022
Date
2/18/2022

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date